

General Assembly

Raised Bill No. 142

February Session, 2016

LCO No. 1440



Referred to Committee on JUDICIARY

Introduced by: (JUD)

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT AND ADOPTION OF THE CONNECTICUT UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. Subsections (a) and (b) of section 1-350e of the 2016
- 2 supplement to the general statutes are repealed and the following is
- 3 substituted in lieu thereof (*Effective July 1, 2016*):
- 4 (a) A power of attorney executed in this state on or after [October 1,
- 5 2015] July 1, 2016, is valid if its execution complies with section 1-350d.
- 6 (b) A power of attorney executed in this state before [October 1,
- 7 2015] July 1, 2016, is valid if its execution complied with the law of this
- 8 state as it existed at the time of execution.
- 9 Sec. 2. Subsection (a) of section 1-351*l* of the 2016 supplement to the
- 10 general statutes is repealed and the following is substituted in lieu
- 11 thereof (*Effective July 1, 2016*):

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- 12 (a) Unless the power of attorney otherwise provides, language in a 13 power of attorney granting general authority with respect to personal
- 14 and family maintenance authorizes the agent to:
- 15 (1) Perform the acts necessary to maintain the customary standard
- of living of the principal, the principal's spouse and the following
- 17 individuals, whether living when the power of attorney is executed or
- 18 later born:
- 19 (A) The principal's children;
- 20 (B) Other individuals legally entitled to be supported by the 21 principal; and
- 22 (C) The individuals whom the principal has customarily supported 23 or indicated the intent to support;
- (2) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;
- 27 (3) Provide living quarters for the individuals described in subdivision (1) of this subsection by:
- 29 (A) Purchase, lease or other contract; or
- 30 (B) Paying the operating costs, including interest, amortization 31 payments, repairs, improvements and taxes, for premises owned by 32 the principal or occupied by those individuals;
- 33 (4) Provide normal domestic help, usual vacations and travel 34 expenses and funds for shelter, clothing, food, appropriate education, 35 including post secondary and vocational education and other current 36 living costs for the individuals described in subdivision (1) of this 37 subsection;
- 38 (5) Pay expenses for necessary health care and custodial care on

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- 39 behalf of the individuals described in subdivision (1) of this subsection;
- 40 (6) Act as the principal's personal representative pursuant to the 41 Health Insurance Portability and Accountability Act, Sections 1171 to 42 1179, inclusive, of the Social Security Act, 42 USC 1320d, as amended 43 from time to time, and applicable federal regulations, in making 44 decisions related to the past, present or future payment for the 45 provision of health care consented to by the principal or anyone 46 authorized under the law of this state to consent to health care on 47 behalf of the principal;
- 48 (7) Continue any provision made by the principal for automobiles or 49 other means of transportation, including registering, licensing, 50 insuring and replacing them, for the individuals described in 51 subdivision (1) of this subsection;
- 52 (8) Maintain credit and debit accounts for the convenience of the 53 individuals described in subdivision (1) of this subsection and open 54 new accounts; [and]

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- (9) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or continue contributions to those organizations; and
- (10) Execute a written document in advance of the principal's death, in accordance with section 45a-318, as amended by this act, directing the disposition of the principal's body upon the disposition of the principal's body upon the death of the principal or designating an individual to have custody and control of the disposition of the principal's body upon the death of the principal.
- Sec. 3. Subsection (a) of section 1-352 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):
- 67 (a) The use of the following form in the creation of a power of

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attorney is authorized, and, when used, it shall be construed in accordance with the provisions of sections 1-350 to 1-353b, inclusive:

70 "Notice: The powers granted by this document are broad and 71 sweeping. They are defined in Connecticut Uniform Power of Attorney 72 Act, which expressly permits the use of any other or different form of 73 power of attorney desired by the parties concerned. The grantor of any 74 power of attorney or the agent may make application to a court of 75 probate for an accounting as provided in subsection (b) of section 45a-76 175 of the general statutes. This power of attorney does not authorize 77 the agent to make health care decisions for you.

Know All Persons by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Connecticut Uniform Power of Attorney Act:

That I (insert name and address of the principal) do hereby appoint (insert name and address of the agent, or each agent, if more than one is designated) my agent(s) TO ACT

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If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word 'severally'. Failure to make any insertion or the insertion of the word 'jointly' shall require the agents to act jointly.

First: In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in the Connecticut Uniform Power of Attorney Act to the extent that I am permitted by law to act through an agent:

(Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (M), inclusive, shall automatically constitute an elimination also of subdivision (N).)

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98	To strike out any subdivision the principal must draw a line				
99	through the text of that subdivision AND write his initials in the box				
100	opposite.				
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T1	(A)	[real estate transactions (real property)] Real property:	()		
T2	(A) (B)	[real estate transactions (real property)] Real property; [chattel and goods transactions (tangible personal			
T3	(D)	property)] Tangible personal property;	()		
T4	(C)	[bond, share and commodity transactions (stocks and	()		
T5	(0)	bonds)] Stocks and bonds;	(;		
T6	<u>(D)</u>	Commodities and options;	(
T7	[(D)] <u>(E)</u>	[banking transactions (banks and other financial	(
T8	[(-/] (=/	institutions)] Banks and other financial institutions;			
Т9	[(E)] <u>(F)</u>	[business operating transactions (operation of entity or	()		
T10	L(/1 \ /	business)] Operation of entity or business;			
T11	[(F)] <u>(G)</u>	[insurance transactions (insurance and annuities)]	()		
T12	-	Insurance and annuities;	` '		
T13	[(G)] <u>(H)</u>	[estate transactions (estates, trusts, and other beneficial	()		
T14		interests)] Estates, trusts and other beneficial interests;			
T15	[(H)] <u>(I)</u>	[claims] <u>Claims</u> and litigation;	()		
T16	[(I)] <u>(J)</u>	[personal relationships and affairs (personal and family			
T17		maintenance)] Personal and family maintenance;			
T18	[(J)] <u>(K)</u>	[benefits from military service (benefits from governmental	()		
T19		programs or civil or military service)] Benefits from			
T20		governmental programs or civil or military service;			
T21	[(K)	records, reports and statements;	()		
T22	(L)	[retirement] Retirement plans;	()		
T23	(M)	[taxes] <u>Taxes</u> ;	()		
T24	(N)	[all] <u>All</u> other matters;	()		
T25					
T26					
T27					
T28					
101	(Carania	I morrisions and limitations may be included in the statutoms			
101		al provisions and limitations may be included in the statutory			
102	-	ver of attorney only if they conform to the requirements of the	to the requirements of the		
103	Connection	cut Uniform Power of Attorney Act.)			
104	(Strike out below and initial in the opposite box any one or more of				

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105 106 107 108	the subdivisions as to which the principal does NOT desire to give the agent authority. To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.)				
109	(CA	UTION: Granting any of the following will give your agent t	he		
110	authority to take actions that could significantly reduce your property				
111		nge how your property is distributed at your death.)	ity		
111	Of Cita	inge now your property is distributed at your death.)			
112	YO	U SHOULD SEEK LEGAL ADVICE BEFORE			
113	INC	CLUDING THE FOLLOWING POWERS:			
Г29 Г30 Г31 Г32 Г33	(O)	Create, amend, revoke or terminate an inter vivos trust, provided in the case of a trust established for a disabled person pursuant to 42 USC 1396p (d)(4)(A) or 42 USC 1396p (d)(4)(C), the creation of such trust by an agent shall be only as permitted by federal law	()		
T34 T35 T36 T37 T38 T39 T40 T41 T42 T43 T44 T45 T46 T47 T48 T49	(P)	Make a gift, subject to the limitations of the Connecticut Uniform Power of Attorney Act and any special instructions in this power of attorney. Unless otherwise provided in the special instructions, gifts per recipient may not exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section 2513, in an amount per recipient not to exceed twice the annual federal gift tax exclusion limit. In addition, an agent must determine that gifts are consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors			
T50	(Q)	Create or change rights of survivorship	()		
T51 T52	(R)	Create or change a beneficiary designation	()		
Т53 Т54	(S)	Authorize another person to exercise the authority	()		

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129	If my successor agent is unable or unwilling to act for me, I name as		
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T69 T70	Name of Second Successor Agent:		
T71	Second Successor Agent's Address:		
131	Sixth:		
132	EFFECTIVE DATE		
133	This power of attorney is effective immediately unless I have stated		
134	otherwise in the special instructions.		
135	In Witness Whereof I have hereunto signed my name and affixed		
136	my seal this day of, 20		
137	(Signature of Principal) (Seal)		
138	(ACKNOWLEDGMENT)		
139	The execution of this statutory form power of attorney shall be duly		
140	acknowledged by the principal in the manner prescribed for the		
141	acknowledgment of a conveyance of real property.		
142	No provision of this chapter shall be construed to bar the use of any		
143	other or different form of power of attorney desired by the parties		
144	concerned.		
145	Every statutory form power of attorney shall contain, in boldface		
146	type or a reasonable equivalent thereof, the "Notice" at the beginning		
147	of this section.		
148	Sec. 4. Section 1-353b of the 2016 supplement to the general statutes		
149	is repealed and the following is substituted in lieu thereof (Effective July		

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- 150 1, 2016):
- 151 (a) Except as otherwise provided in sections 1-350 to 1-353b,
- inclusive, as amended by this act, on [October 1, 2015] July 1, 2016, said
- sections apply to:
- (1) A power of attorney created before, on, or after [October 1, 2015]
- 155 <u>July 1, 2016</u>;
- 156 (2) A judicial proceeding concerning a power of attorney
- 157 commenced on or after [October 1, 2015] <u>July 1, 2016</u>; and
- 158 (3) A judicial proceeding concerning a power of attorney
- commenced before [October 1, 2015] <u>July 1, 2016</u>, unless the court finds
- that application of a provision of sections 1-350 to 1-353b, inclusive, <u>as</u>
- amended by this act, would substantially interfere with the effective
- 162 conduct of the judicial proceeding or prejudice the rights of a party, in
- which case that provision does not apply and the superseded law
- 164 applies.
- (b) An act performed by an agent under a power of attorney before
- 166 [October 1, 2015] <u>July 1, 2016</u>, is not affected by sections 1-350 to 1-
- 167 353b, inclusive, as amended by this act.
- Sec. 5. Subsection (a) of section 19a-580e of the 2016 supplement to
- the general statutes, as amended by section 54 of public act 15-240, is
- 170 repealed and the following is substituted in lieu thereof (Effective July
- 171 1, 2016):
- 172 (a) Except as authorized by a court of competent jurisdiction, a
- 173 conservator shall comply with a conserved person's individual health
- 174 care instructions and other wishes, if any, expressed while the
- 175 conserved person had capacity and to the extent known to the
- 176 conservator, and the conservator may not revoke the conserved
- 177 person's advance health care directive or a directive executed in
- accordance with subdivision (10) of section 1-351l, as amended by this

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- act, or section 45a-318, as amended by this act, unless the appointing
 court expressly so authorizes.
- Sec. 6. Subsection (c) of section 19a-580f of the 2016 supplement to the general statutes, as amended by section 51 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July*
- 184 1, 2016):

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- (c) A power of attorney for health care decisions properly executed prior to October 1, 2006, shall have the same power and effect as provided under section [1-55] 1-54a of the general statutes, revision of 1958, revised to January 1, [2015] 2005, in effect at the time of its execution.
- Sec. 7. Subdivision (2) of subsection (a) of section 45a-318 of the 2016 supplement to the general statutes, as amended by section 55 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):
 - (2) Any conservator of the person authorized pursuant to subdivision (5) of subsection (a) of section 45a-656 to act on behalf of a conserved person, or any agent authorized to act on behalf of a principal, including any agent authorized pursuant to subdivision (1) of section 1-351l, as amended by this act, may execute in advance of such conserved person's or principal's death a written document, subscribed by such conservator or agent and attested by two witnesses, either: (A) Directing the disposition of such conserved person's or principal's body upon the death of such conserved person or principal, which document may also designate an individual to have custody and control of such conserved person's or principal's body and to act as agent to carry out such directions; or (B) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such conserved person's or principal's body upon the death of such conserved person or principal. Such disposition shall include, but not be limited to, cremation,

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210 incineration, disposition of cremains, burial, method of interment and 211 cryogenic preservation. Any such document may designate an 212 alternate to an individual designated under subparagraph (A) or (B) of 213 this subdivision. A document executed by a conservator pursuant to 214 this subdivision shall include provisions indicating that such 215 document (i) is valid if the person is under conservatorship at the time 216 of his or her death, and (ii) terminates upon the termination of the 217 conservatorship when such termination occurs prior to the death of the 218 conserved person.

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- Sec. 8. Subsection (a) of section 45a-660 of the 2016 supplement to the general statutes, as amended by section 53 of public act 15-240, is repealed and the following is substituted in lieu thereof (*Effective July* 1, 2016):
- (a) (1) A conserved person may, at any time, petition the court of probate having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved person shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the Court of Probate, unless the hearing is continued for good cause. If such hearing is not held within such thirty-day period or continuance period, if applicable, conservatorship shall terminate. If the court of probate having jurisdiction finds a conserved person to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. [The court may also order the reinstatement of any authority of any agent under a power of attorney that was previously limited, suspended or terminated by the court because of the conservatorship.] If the court finds upon hearing and after notice which the court prescribes, that a conserved person is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of the conserved person's property be

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243 restored to the conserved person. The court may order the 244 reinstatement of any authority of any agent under a power of attorney 245 that was previously limited or suspended by the court because of the 246 conservatorship. (2) If the court finds upon hearing and after notice 247 which the court prescribes that a conserved person has no assets of any 248 kind remaining except for that amount allowed by subsection (c) of 249 section 17b-80, the court may order that the conservatorship of the 250 estate be terminated. The court shall thereupon order distribution of 251 the remaining assets to the conservator of the person or, if there is no 252 conservator or the conservator declines or is unable to accept or the 253 conservator is the Commissioner of Social Services, to some suitable 254 person, to be determined by the court, to hold for the benefit of the 255 conserved person, upon such conservator or person giving such 256 probate bond, if any, as the court orders. (3) If any conserved person 257 having a conservator dies, the conserved person's property other than 258 property which has accrued from the sale of the conserved person's 259 real property shall be delivered to the conserved person's executor or 260 administrator. The unexpended proceeds of the conserved person's 261 real property sold as aforesaid shall go into the hands of the executor 262 or administrator, to be distributed as such real property would have 263 been.

- Sec. 9. (NEW) (*Effective October 1, 2016*) Sections 9 to 18, inclusive, of this act may be cited as the "Connecticut Uniform Recognition of Substitute Decision-Making Documents Act".
- Sec. 10. (NEW) (*Effective October 1, 2016*) As used in sections 9 to 18, inclusive, of this act:

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(1) "Decision maker" means a person authorized to act for an individual under a substitute decision-making document, whether denominated a decision maker, agent, attorney-in-fact, proxy or representative or by another title. "Decision maker" includes an original decision maker, a co-decision maker, a successor decision maker and a person to which a decision maker's authority is delegated;

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- 275 (2) "Good faith" means honesty in fact;
- 276 (3) "Health care" means a service or procedure to maintain, 277 diagnose, treat or otherwise affect an individual's physical or mental 278 condition;
- (4) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity;
- 282 (5) "Personal care" means an arrangement or service to provide an 283 individual shelter, food, clothing, transportation, education, recreation, 284 social contact or assistance with the activities of daily living;
- 285 (6) "Property" means anything that may be subject to ownership, 286 whether real or personal or legal or equitable, or any interest or right 287 therein;
- 288 (7) "Record" means information that is inscribed on a tangible 289 medium or that is stored in an electronic or other medium and is 290 retrievable in perceivable form; and
- 291 (8) "Substitute decision-making document" means a record created 292 by an individual to authorize a decision maker to act for the individual 293 with respect to property, health care or personal care.
- Sec. 11. (NEW) (*Effective October 1, 2016*) (a) A substitute decisionmaking document for property executed outside this state is valid in this state if, when the document was executed, the execution complied with the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.
- 300 (b) A substitute decision-making document for health care or 301 personal care, including the appointment of a health care 302 representative, executed outside this state is valid in this state if, when 303 the document was executed, the execution complied with: (1) The law

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of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed; or (2) the law of this state, other than sections 9 to 18, inclusive, of this act.

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- (c) Except as otherwise provided by law, other than sections 9 to 18, inclusive, of this act, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.
- Sec. 12. (NEW) (*Effective October 1, 2016*) The meaning and effect of a substitute decision-making document and the authority of the decision maker are determined by the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.
- 317 Sec. 13. (NEW) (Effective October 1, 2016) (a) Except as provided in 318 subsection (f) of section 1-56b, section 19a-579b and section 19a-580g of 319 the general statutes, a person that in good faith accepts a substitute 320 decision-making document without actual knowledge that the 321 document is void, invalid or terminated, or that the authority of the 322 purported decision maker is void, invalid or terminated, may assume 323 without inquiry that the document is genuine, valid and still in effect 324 and that the decision maker's authority is genuine, valid and still in 325 effect.
- 326 (b) A person who is asked to accept a substitute decision-making 327 document may request and without further investigation rely on:
- 328 (1) The decision maker's assertion of a fact concerning the 329 individual for whom a decision will be made, the decision maker or 330 the document;
- 331 (2) A translation of the document if the document contains, in whole 332 or in part, language other than English; and

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- 333 (3) An opinion of counsel regarding any matter of law concerning 334 the document if the person provides in a record the reason for the 335 request.
- Sec. 14. (NEW) (Effective October 1, 2016) (a) Except as provided in
- subsection (b) of this section, or by law of this state other than sections
- 9 to 13, inclusive, of this act, and sections 15 to 18, inclusive, of this act,
- 339 a person who is asked to accept a substitute decision-making
- 340 document shall accept within a reasonable time a document that
- 341 purportedly meets the validity requirements of section 11 of this act.
- 342 The person may not require an additional or different form of
- 343 document for authority granted in the document presented.
- 344 (b) A person that is asked to accept a substitute decision-making document is not required to accept the document if:
- 346 (1) The person otherwise would not be required in the same 347 circumstances to act if requested by the individual who executed the 348 document:
- 349 (2) The person has actual knowledge of the termination of the 350 decision maker's authority or the document;
- 351 (3) The person's request under subsection (b) of section 13 of this act 352 for the decision maker's assertion of fact, a translation or an opinion of 353 counsel is refused;
- 354 (4) The person in good faith believes that the document is not valid 355 or the decision maker does not have the authority to request a 356 particular transaction or action; or
- (5) The person makes, or has actual knowledge that another person has made, a report to the Office of Protection and Advocacy for Persons with Disabilities or the Department of Social Services stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation or abandonment by the decision

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- maker or a person acting for or with the decision maker.
- 363 (c) A person that in violation of this section refuses to accept a substitute decision-making document is subject to:
- 365 (1) A court order mandating acceptance of the document; and
- 366 (2) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.
- Sec. 15. (NEW) (*Effective October 1, 2016*) The remedies under sections 9 to 18, inclusive, of this act are not exclusive and do not abrogate any right or remedy under law of this state, other than sections 9 to 18, inclusive, of this act.
- Sec. 16. (NEW) (*Effective October 1, 2016*) In applying and construing sections 9 to 18, inclusive, of this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.
- Sec. 17. (NEW) (*Effective October 1, 2016*) Sections 9 to 18, inclusive, of this act, modify, limit or supersede the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but do not modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 USC 7003(b).
- Sec. 18. (NEW) (*Effective October 1, 2016*) Sections 9 to 17, inclusive, of this act apply to a substitute decision-making document created before, on or after October 1, 2016.

This act shall take effect as follows and shall amend the following sections:				
Section 1	July 1, 2016	1-350e(a) and (b)		
Sec. 2	July 1, 2016	1-3511(a)		
Sec. 3	July 1, 2016	1-352(a)		

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Sec. 4	July 1, 2016	1-353b
Sec. 5	July 1, 2016	19a-580e(a)
Sec. 6	July 1, 2016	19a-580f(c)
Sec. 7	July 1, 2016	45a-318(a)(2)
Sec. 8	July 1, 2016	45a-660(a)
Sec. 9	October 1, 2016	New section
Sec. 10	October 1, 2016	New section
Sec. 11	October 1, 2016	New section
Sec. 12	October 1, 2016	New section
Sec. 13	October 1, 2016	New section
Sec. 14	October 1, 2016	New section
Sec. 15	October 1, 2016	New section
Sec. 16	October 1, 2016	New section
Sec. 17	October 1, 2016	New section
Sec. 18	October 1, 2016	New section

Statement of Purpose:

To: (1) Make minor revisions to the Connecticut Uniform Power of Attorney Act to ensure conformity with other provisions of the general statutes and consistency of all effective dates relating to implementation of the act, and (2) adopt the Connecticut Uniform Recognition of Substitute Decision-Making Documents Act.

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